



**DEPARTMENT OF TRANSPORTATION**

**[4910-22-P]**

**Federal Highway Administration**

**[Docket No. FHWA–2014-0024]**

**Application from the State of Texas Under the Surface Transportation Project Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning FHWA's Environmental Review Responsibilities to the State**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed MOU and request for comments.

**SUMMARY:** This notice announces that the FHWA has received and reviewed an application from the Texas Department of Transportation (State) requesting participation in the Surface Transportation Project Delivery Program (Program). This Program allows for States to apply to assume, and for FHWA to assign, environmental review responsibilities under the National Environmental Policy Act of 1969 (NEPA), and all or part of FHWA's responsibilities for environmental reviews, consultations, or other actions required under any Federal environmental law with respect to one or more Federal highway projects within the State. The FHWA has determined the application to be complete, and developed a draft MOU with the State outlining how the State will implement the program, with FHWA oversight. The public and agencies are now invited to comment on the State's request and the draft MOU. In particular, FHWA seeks comments on the proposed scope of the assignments and assumptions of responsibilities set out in the draft MOU for environmental reviews, consultations, and other activities to be assigned.

**DATES:** Please submit comments by [*insert date 30 days after date of publication in the Federal Register*].

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Facsimile (Fax): 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground, Floor Room W12-140, Washington, DC 20590-0001.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE., Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Leary, Director of Planning and Program Development, Federal Highway Administration Texas Division, 300 E. 8 St., Room 826, Austin, TX 78701, 7:00 a.m. – 4:30 p.m. c.t., (512) 536-5940, [michael.leary@dot.gov](mailto:michael.leary@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

An electronic copy of this notice may be downloaded from the Federal Register's home page at <http://www.archives.gov> and the Government Printing Office's database at <http://www.access.gpo.gov/nara>. An electronic version of the application materials and proposed MOU may be downloaded by accessing the DOT DMS docket, as described above, at <http://www.regulations.gov/>.

## **Background**

Section 327 of title 23, United States Code (U.S.C.), allows for States to apply to assume, and for the Secretary of the USDOT (Secretary) to assign, the Secretary's NEPA responsibilities and all or part of the Secretary's responsibilities for environmental review, consultation, or other actions required under any other Federal environmental law with respect to one or more Federal highway projects. The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

The State has submitted application materials requesting to participate in this Program. The FHWA has reviewed these application materials, which include public and agency comments on the application and has determined them complete. The FHWA and the State have developed a draft MOU outlining how the State will implement the Program and how FHWA will oversee the State's implementation as required by 23 U.S.C. 327. The FHWA now seeks public comments on the State's request pursuant to 23 CFR 773.111(a).

Under the proposed MOU, FHWA would assign to the State the NEPA environmental review responsibilities for the following Federal highway projects:

1. Projects requiring environmental impact statements (EIS), both on the State highway system (SHS) and local government projects off the SHS that FHWA funds or that require FHWA approvals, except the following EIS projects, which FHWA will not assign: Harbor Bridge, Trinity Parkway, and South Padre Island Causeway 2.

2. Projects requiring environmental assessments, both on the SHS and local government projects off the SHS that FHWA funds or that require FHWA approvals.

3. Projects qualifying for categorical exclusions (CE), both on the SHS and local government projects off the SHS that FHWA funds or that require FHWA approvals.

The FHWA previously signed a MOU with the State assigning CE responsibility under the authority in 23 U.S.C. 326. Upon execution of this MOU, the 23 U.S.C. 326 CE MOU between FHWA and the State will be terminated, and projects included under that MOU will be assumed under the Program.

4. Highway projects within the State that other Federal agencies fund [or projects without any Federal funding] that also include FHWA funding or that require FHWA approvals. For these projects, the assigned environmental review responsibilities would be limited to those that FHWA would otherwise have.

The FHWA's NEPA responsibilities include those established in implementing procedures such as 40 CFR parts 1500-1508, DOT Order 5610.1C, 23 CFR part 771, and those established through other NEPA-related provisions such as 23 U.S.C. 139. In addition to the NEPA review responsibilities associated with the above categories of projects, the assignment would include FHWA's responsibilities associated with these

projects under the following environmental review, consultation, and other related requirements:

#### Air Quality

- Clean Air Act (CAA), 42 U.S.C. 7401–7671q, with the exception of any conformity determinations.

#### Noise

- Noise Control Act of 1972, 42 U.S.C. 4901-4918
- Compliance with the noise regulations in 23 CFR part 772

#### Wildlife

- Endangered Species Act of 1973, 16 U.S.C. 1531–1544
- Marine Mammal Protection Act, 16 U.S.C. 1361-1423h
- Anadromous Fish Conservation Act, 16 U.S.C. 757a–757f
- Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- Migratory Bird Treaty Act, 16 U.S.C. 703–712
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 et seq., with Essential Fish Habitat requirements at 1855(b)(2)

#### Historic and Cultural Resources

- National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 et seq.
- 23 U.S.C. 138 (“Section 4(f)”) and 49 U.S.C. 303 and implementing regulations at 23 CFR part 774
- Archaeological Resources Protection Act of 1977, 16 U.S.C. 470aa–470mm

- Archeological and Historic Preservation Act of 1966, as amended, 16 U.S.C. 469–469c
- Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013; 18 U.S.C. 1170.

#### Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209

#### Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251–1387 (Section 401, 402, 404, 408, Section 319)
- Coastal Barrier Resources Act, 16 U.S.C. 3501–3510
- Coastal Zone Management Act, 16 U.S.C. 1451–1466
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–26
- General Bridge Act of 1946, 33 U.S.C. 525–533
- Rivers and Harbors Act of 1899, 33 U.S.C. 401–406
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3901, 3921
- Wetlands Mitigation, 23 U.S.C. 119(g), 133 (b)(14)
- Flood Disaster Protection Act, 42 U.S.C. 4001–4130

#### Parklands and Other Special Uses

- 23 U.S.C. 138 and 49 U.S.C. 303, and implementing regulations at 23 CFR part 774.
- Land and Water Conservation Fund Act, 16 U.S.C. 4601–4 to 4601–11

### FHWA-Specific

- Planning and Environmental Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135.
- Programmatic Mitigation Plans, 23 U.S.C. 169, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135.

### Executive Orders Relating to Highway Projects

- E.O. 11990, Protection of Wetlands
- E.O. 11988, Floodplain Management
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13112, Invasive Species

The MOU would allow the State to act in the place of FHWA for highway projects in carrying out the functions described above, except with respect to government-to-government consultations with federally recognized Indian tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian tribes, which is required under some of the listed laws and Executive Orders. The State will continue to handle routine consultations with the tribes and understands that a tribe has the right to direct government-to-government consultation with FHWA upon request. The State also may assist FHWA with formal consultations, with consent of a tribe, but FHWA remains responsible for the formal consultation. The State also will not assume FHWA's responsibilities for

conformity determinations required under section 176 of the CAA or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

A copy of the application materials and proposed MOU may be viewed on the DOT DMS Docket, as described above, or may be obtained by contacting FHWA or the State at the addresses provided above. A copy also may be viewed on the State's Web site at [www.txdot.gov](http://www.txdot.gov).

The FHWA will consider the comments submitted when making its decision to approve the application and execute the MOU. Any final MOU approved by FHWA may include changes based on comments received on the proposed MOU.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR part 773.

Issued on: October 7, 2014.

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Gregory G. Nadeau,  
Acting Administrator,  
Federal Highway Administration.



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